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3 UNITED STATES DISTRICT COURT  
4 DISTRICT OF NEVADA

5 \* \* \*

6 GLENDA BRUNSON,

7 Plaintiff,

8 v.

9 SOCIAL SECURITY,

10 Defendant.  
11

Case No. 2:19-cv-00917-RFB-DJA

**REPORT & RECOMMENDATION**

12 This matter is before the Court on Plaintiff Glenda Brunson's third application to proceed  
13 *in forma pauperis* submitted on October 29, 2019. (ECF No. 8). The Court previously reviewed  
14 her first application and found it to be incomplete because out of eight sections, she only fully  
15 responded to one and partially to another. (ECF No. 4). Then, the Court reviewed her second  
16 application and again found it to be incomplete because she failed to complete the section entitled  
17 gross pay or wages while indicating that she has no other assets or expenses. (ECF No. 7). She  
18 was directed to complete the Long Form application and the Court will now consider her Long  
19 Form application.

20 The Ninth Circuit has recognized that "there is no formula set forth by statute, regulation,  
21 or case law to determine when someone is poor enough to earn IFP status." *Escobedo v.*  
22 *Applebees*, 787 F.3d 1226, 1235 (9th Cir. 2015). An applicant need not be absolutely destitute to  
23 qualify for a waiver of costs and fees; nonetheless, she must demonstrate that because of her  
24 poverty she cannot pay those costs and still provide herself with the necessities of life. *See*  
25 *Adkins v. E.I DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948). The applicant's affidavit  
26 must state the facts regarding the individual's poverty "with some particularity, definiteness and  
27 certainty." *United States v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981) (citation omitted). If an  
28 individual is unable or unwilling to verify his or her poverty, district courts have the discretion to

1 make a factual inquiry into a plaintiff's financial status and to deny a request to proceed in forma  
2 pauperis. *See, e.g., Marin v. Hahn*, 271 Fed.Appx. 578 (9th Cir. 2008) (finding that the district  
3 court did not abuse its discretion by denying the plaintiff's request to proceed IFP because he  
4 "failed to verify his poverty adequately"). If the court determines that an individual's allegation  
5 of poverty is untrue, "it shall dismiss the case." 28 U.S.C. § 1915(e)(2).

6 The District of Nevada has adopted three types of IFP applications: a "Prisoner Form" for  
7 incarcerated persons and a "Short Form" (AO 240) and "Long Form" (AO 239) for non-  
8 incarcerated persons. In particular, the Long Form requires comprehensive information regarding  
9 the applicant and his or her spouse's sources of income, employment history, bank accounts,  
10 assets, monthly expenses, age, and years of schooling among other things. As the name suggests,  
11 the Long Form requires more detailed information than the Short Form. The Court typically does  
12 not order an applicant to submit the Long Form unless the Short Form is inadequate for  
13 determining whether the applicant qualifies for IFP status. Thus, when an applicant is  
14 specifically ordered to submit the Long Form, the correct form must be submitted and the  
15 applicant must provide all the information requested in the Long Form so that the Court is able to  
16 make a fact finding regarding the applicant's financial status.

17 Plaintiff has twice submitted an incomplete short form application. As a result, Plaintiff  
18 completed a long form application that indicates her income and expenses are \$0, but that her  
19 income from her spouse is \$1,397 per month and expenses for her spouse are \$650. In  
20 determining whether to permit a plaintiff to proceed *in forma pauperis*, the Court evaluates the  
21 income and assets to which the plaintiff has access, including those of her spouse. *See, e.g.,*  
22 *Flores v. Colvin*, 2014 U.S. Dist. LEXIS 93236, at \*3-4 (D. Nev. May 22, 2014) (collecting  
23 cases); *Betten v. Berryhill*, 2018 U.S. Dist. LEXIS 56623 (D. Nev. April 3, 2018). "If the  
24 plaintiff is supported by [her] spouse, and [her] spouse is financially able to pay the costs of this  
25 appeal, it follows that the plaintiff's own lack of funds will not prevent [her] from gaining access  
26 to the courts." *Monti v. McKeon*, 600 F. Supp. 112, 114 (D. Conn. 1984). As her income from  
27 her spouse exceeds her expenses from her spouse, the Court finds that Plaintiff does not qualify  
28 for *in forma pauperis* status. Therefore, the Court will recommend that her application be denied.

The Court will retain plaintiff's complaint (ECF No. 1-1), but it will not expend resources to screen it at this time given its recommendation that she pay the filing fee.

**RECOMMENDATION**

IT IS THEREFORE RECOMMENDATION that Plaintiff Glenda Brunson's third application to proceed *in forma pauperis* be **denied**.

IT IS FURTHER RECOMMENDATION that plaintiff must pay the full \$400 fee for a civil action, which includes the \$350 filing fee and the \$50 administrative fee, to proceed in this action.

**NOTICE**

Pursuant to Local Rule IB 3-2 any objection to this Report and Recommendation must be in writing and filed with the Clerk of the Court within (14) days after service of this Notice. The Supreme Court has held that the courts of appeal may determine that an appeal has been waived due to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985), *reh'g denied*, 474 U.S. 1111 (1986). The Ninth Circuit has also held that (1) failure to file objections within the specified time and (2) failure to properly address and brief the objectionable issues waives the right to appeal the District Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

DATED: October 31, 2019



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DANIEL J. ALBREGTS  
UNITED STATES MAGISTRATE JUDGE